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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JAMES E. DUNSTAN
ADMITTED IN VA AND DC

OUR FILE NO.
0090-100-63

December 11, 1998

**Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554**

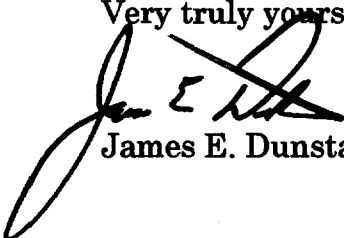
**Re: Comments of Meredith Corporation
CS Docket No. 98-201**

Dear Ms. Salas:

Enclosed herewith, on behalf of Meredith Corporation, are an original and nine (9) copies of its **COMMENTS** in the above-referenced proceeding. Sufficient copies are provided for each of the Commissioners.

Should there be any questions concerning this matter, please communicate with the undersigned.

Very truly yours,


James E. Dunstan

JED/jmm

Enclosure

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Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 11 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Satellite Delivery of Network Signals)
to Unserved Households for)
Purposes of the Satellite Home)
Viewer Act)
)
Part 73 Definition and Measurement)
of Signals of Grade B Intensity)

CS Docket No. 98-201
RM No. 9335
RM No. 9345

To: The Commission

COMMENTS OF MEREDITH CORPORATION

Respectfully submitted,

MEREDITH CORPORATION

James E. Dunstan
its Attorney

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December 11, 1998

Summary

In granting the Direct To Home ("DTH") industry a limited compulsory license in the 1988 Satellite Home Viewer Act ("SHVA"), Congress stated that DTH providers could only provide distant network programming to "unserved areas." Congress defined such areas as those outside the Grade B signal of local stations, and concluded that:

- 1) Total "unserved areas" would constitute only a "small percentage of television households";
- 2) A "high percentage of all U.S. households" would be defined as "served" and thus not available for DTH to sell distant signals into; and
- 3) The typical "unserved" household would be characterized as "rural."

Congress knew what it was doing, and concluded that using the Commission's then-current definition of Grade B service would result in a definition of "unserved areas" which met all of the criteria above.

NRTC and EchoStar, on behalf of the DTV industry have refused to abide by the statute, and after having been found in violation of the SHVA by several courts, now wish to redefine the term "unserved" in such a way as to allow them to continue to sell distant network programming to their subscribers everywhere. At the same time, the DTH industry has launched a scorched Earth campaign by encouraging all subscribers to seek waivers from local television stations, regardless of whether they can actually receive the local signal. The burden on stations has been huge, as documented herein.

Although the FCC may have some flexibility in defining what "Grade B" means, it cannot accept either the NRTC or EchoStar proposals, since both would result in "unserved areas" inconsistent with the three Congressional criteria listed above, and such standard would be stricter than the Grade A contour standard Congress could have adopted in 1988 but rejected.

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**Before the
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In the Matter of)	
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)	
Part 73 Definition and Measurement)	
of Signals of Grade B Intensity)	
To: The Commission		

COMMENTS OF MEREDITH CORPORATION

Meredith Corporation ("Meredith"), by its attorneys, hereby files these comments in response to the Commission's *Notice of Proposed Rule Making ("NPRM")* in the above-referenced proceeding. In support of its Comments, Meredith submits:

I. INTRODUCTION

This year Meredith celebrates its 50th year as an FCC licensee. It owns ten full power television stations, and will soon close on an eleventh.¹ Meredith has been an active participant in many major Commission proceedings through the years, and once again feels

¹ Meredith is the licensee of the following stations: KCTV, Kansas City, MO; KPDX, Portland, OR; KPHO-TV, Phoenix, AZ; KVVU-TV, Henderson (Las Vegas), NV; WFSB, Hartford, CT; WHNS, Ashville, NC; WNEM-TV, Bay City, MI; WOFL, Orlando, FL; WOGX-TV, Ocala, FL; and WSMV-TV, Nashville, TN. Meredith also owns low power television station KFXO-LP, Bend, OR. The Commission has approved the purchase by Meredith of WGNX, Atlanta, GA.

compelled to participate in a proceeding which has the potential to fundamentally alter the nature of free over-the-air broadcasting. What the Commission faces in this proceeding is nothing less than a direct challenge by the Direct To Home ("DTH") industry, headed by the National Rural Telecommunications Cooperative ("NRTC") and EchoStar Communications Corporation ("EchoStar"), to the carefully crafted interplay between copyright law and communications policy which has allowed stations to receive the benefit of their contractual bargains, while still allowing alternative media delivery systems to flourish. A misstep in this proceeding will cast aside decades of sound policy in favor of rescuing an industry from its own misdeeds in under the guise of "competition."

II. UNDERSTANDING WHAT REALLY IS GOING ON HERE

Before the Commission assesses the somewhat esoteric issues of statutory construction, Congressional intent, and technical definitional issues, it must recognize what really is going on in this proceeding. It can be stated very simply:

Having been caught with its hand in the cookie jar, the DTH industry wants the Commission to redefine the term "cookie" to absolve its conduct.

That is what's really going on here. The DTH industry willfully, knowingly, and repeatedly violated the law, and now wishes to be

excused from its conduct.² The Commission acknowledges this in the *NPRM*. “[M]any, if not most, of those subscribers [set to be cut off pursuant to the Miami court order] do not live in ‘unserved households’ under any interpretation of that term.” *NPRM*, par. 15.³ The discussion below of Meredith’s experience over the last year with the SHVA underscores the fact that the DTH industry has not even **tried** to comply with the law. Instead it has pursued the course of “a million wrongs makes a right” – signing up so many subscribers in violation of the law that Congress, or the FCC, would be strong-armed into changing long-standing law and national policy. The Commission has no obligation to save the DTH industry from its own calculated misconduct, no matter how many “competition” buzzwords are spouted.

Moreover, as discussed more fully below, the standards proposed by NRTC and EchoStar make clear their intent. They are not interested in providing network signals to “white areas” – those areas which cannot be served by local stations – as the SHVA requires. They want it all. They want to be able to provide distant network programming to all of

² See *CBS, Inc. et al. v. PrimeTime 24 Joint Venture*, Order Affirming in Part and Reversing in Part Magistrate Judge Johnson's Report and Recommendations, 9 F.Supp.2d 1333 (S.D. FL., May 13, 1998) ("*CBS v. PrimeTime 24*, Order"); *CBS, Inc. et al. v. PrimeTime 24 Joint Venture*, Supplemental Order Granting Plaintiffs' Motion for Preliminary Injunction (S.D. FL., July 10, 1998) (No. 96-3650-CIV) ("*CBS v. PrimeTime 24*, Supplemental Order"). See also *ABC, Inc. v. PrimeTime 24, Joint Venture*, F.Supp.2d ___, 1998 WL 544286 (M.D. N.C., July 16, 1998) (Case No. Civ. A. 1:97CV00090) ("*ABC v. PrimeTime 24*, Court Opinion").

their current subscribers, and want to market their service to all areas of the country, even the cities of license of local television stations. In a strange bit of legislative interpretation, they want the FCC to redefine “white areas” to include almost “all areas” by redefining the term “Grade B” to equal a signal level stronger than Grade A, City Grade, or any signal level ever required of a television station. The Commission must reject the DTH industry’s current game because it has not based in legislative history, violates many decades of combined copyright/communications policy, and is just plain wrong.

III. EXPERIENCE OF MEREDITH STATIONS IN DEALING WITH WAIVER REQUESTS UNDER THE SHVA

The SHVA has been in effect for ten years. During its early years, Meredith stations received occasional requests for waivers.⁴ In instances in which the DTH subscriber lived outside the Grade B contour of the station, a waiver was invariably granted. The Act seemed to be working well.

A few years ago the landscape changed. It became clear that DTH providers were selling network service to unqualified recipients. Once the networks became aware that the DTH industry had decided to ignore

³ According to NAB, the various court decisions addressing this issue have found that some 72 percent of all subscribers currently receiving distant network programming illegally are located within the Grade A contours of local stations.

⁴ A review of the stations listed in footnote 1 indicates that Meredith stations do serve some large geographic markets such as Phoenix and Portland, where it is reasonable to assume that viewers in outlying areas are not able to pick up the programming from either the parent station, or the systems of translators established to reach these outlying areas.

the law, they brought several lawsuits, beginning in 1996. The DTH response was to launch a "scorched Earth" campaign to urge all existing subscribers to request waivers, *regardless of where they lived or whether they could actually receive a local signal*. "Bury them with waivers" appeared to be the battle cry, presumably in hope that stations would be so overwhelmed that they would grant everyone a waiver.

A. Station Staffs Have Been Burdened By Waiver Requests

The barrage of waiver requests placed a tremendous burden on personnel at Meredith stations, as set forth below:

- 1) At Meredith station WOFL, Orlando, Florida, the assistant engineer charged with dealing with SHVA waiver requests has logged 472.5 hours responding thereto. This does not include the time put in by other station personnel who must deal with telephone calls from DTH subscribers, or the time of the station general manager, who makes the ultimate decision on giving individual waivers;
- 2) Employees at WSMV, Nashville, Tennessee, have devoted 242.5 hours to processing and responding to the approximately 500 waiver requests they have received in 1998;
- 3) Employees at WFSB, Hartford, Connecticut, have had to process nearly 1000 waiver requests, and field approximately 1500 phone calls. The staff estimates that it has spent close to 300 hours on these waiver requests;
- 4) At KCTV, Kansas City, Missouri, the Director of Engineering estimates that he spends between one and two hours every day dealing with SHVA waivers (350-plus hours in a year);
- 5) At WNEM-TV, Bay City, Michigan, the Director of Engineering estimates that he spends between six and 10 hours per week dealing with SHVA waivers (300-500 hours per year);
- 6) At WHNS, licensed to Ashville, North Carolina, they have processed some 2000 waiver requests.

If all network affiliates are dealing with this magnitude of waiver requests, then somewhere between 250,000 and 500,000 person-hours are being expended each year on them. As detailed below, most of these requests are inconsistent with the SHVA.

B. Most Waiver Requests Are Improper

Only a small percentage of waiver requests are being made by persons living in outlying areas. The great majority are from persons not entitled to network service. Here are some illustrative examples experienced by Meredith stations;

- 1) WOFL, Orlando, Florida, has received many waiver requests from persons who live within the City Grade contour of the station;
- 2) WFSB, Hartford, Connecticut, has received a large number of waivers from persons who live within 20 miles of the transmitter;
- 3) WOGX-TV, Ocala, Florida, engineers were asked to conduct measurements for a DTH subscriber who claimed not to be able to receive a usable signal. When the measurements were taken, a clear picture was obtained by the test set. Still, the subscriber claimed that WOGX-TV's signal was unavailable. When an inspection of the subscriber's antenna was made, it was determined that it was pointed at the transmitters in the Jacksonville, Florida market, not any of the antennas of the subscriber's home market of Gainesville, Florida;
- 4) WSMV has received a number of waiver requests from individuals living within the Nashville city limits, its city of license (WSMV's tower is located in Nashville);
- 5) WSMV received a waiver request from someone who told the station how much she enjoyed the local news, even naming the news anchors, but saying that she nonetheless wanted a waiver;

- 6) Several Meredith stations have received waiver requests from individuals claiming that they had bought their dishes for their travel vehicles, and would use them only when they were "on the road;"
- 7) WSMV received a waiver request from someone who claimed that he needed it because he was a huge Notre Dame football fan, and WSMV didn't carry all of the Notre Dame games which other NBC affiliates had;
- 8) WSMV has received several waiver requests from people who want to watch "soap operas" twice – once when broadcast locally by WSMV, and then a second time from the West Coast DTH feed;
- 9) WNEM-TV received a waiver request from someone who explained that he liked to watch the national news twice, once as broadcast by WNEM-TV, and the other via the West coast feed provided by their DTH operator;
- 10) WSMV received several waiver requests from people who lived close to station employees who picked up WSMV with indoor rabbit ears;
- 11) KCTV received a request for a waiver from a DTH subscriber who claimed that he lived in a rented home and that the home's antenna was "a piece of junk," but that he could not afford the cost of a new outdoor antenna (probably in the \$30 range), so ironically resorted to subscribing to DTH (at many times that cost);
- 12) KCTV, a CBS station, recently received a waiver request from someone who stated how much she loved the programming aired by KCTV, including "the local news with Anne Peterson." Nonetheless, she claimed she needed a waiver so they could receive CBS programming;
- 13) KCTV has received a large number of waiver requests which consist of nothing more than the "Sample Waiver Request" form PRIMESTAR apparently provides its subscribers, with the name and address written on the bottom. None of the other information is completed, such as the reason why a waiver is requested. An example is attached hereto as Appendix 1, with the name of the individual redacted. The Commission can note that the address on the bottom of this form is from an individual who lives in Kansas City, KCTV's city of license;

- 14) WNEM-TV received a waiver request from someone who claimed that she had been able to receive WNEM-TV just fine before they subscribed to DTH, but since the installation WNEM-TV's picture was coming in snowy, and therefore a waiver should be granted;
- 15) KCTV estimates that only about one in 50 waiver requests come from DTH subscribers who live in outside the Grade B contour of the station;
- 16) WNEM-TV has received several waiver requests from people who when informed that they lived within only a few miles of the transmitter responded with surprise that the waiver was denied, since they were told by the DTV provider that all they had to do was ask the local station for a waiver and they would get it;
- 17) WHNS has received several waiver requests from people who state that they have cable connected to one or more sets in the house, and want DTH on another, in part to be able to receive distant network programming;
- 18) Finally, and most tragically, one Meredith employee had to resort to filing a police complaint against a DTH subscriber, who when refused a waiver because he lived well within the station's coverage area, threatened to come down to the station and "go postal," thereafter describing with detailed knowledge the semi-automatic weaponry appropriate for the job.

Obviously, this is not what Congress intended when it granted the DTH industry a limited exemption from full copyright liability in the SHVA. Instead, the Commission can only glean from the examples above that it is the aim and intent of the DTH industry to sell its service, including imported network signals, to every person in the United States, whether he or she can receive local affiliates or not.

IV. THE COMMISSION MUST CONSIDER THE IMPACT THE DTH INDUSTRY'S PROPOSALS WOULD HAVE ON THE CRITICAL ISSUE OF LOCALISM

While the DTH industry screams mightily about its need to be able to deliver distant network signals in order to compete with cable,⁵ it ignores the critical impact excusing its violation of Federal law would have on the viability of local, over-the-air television.

A. Localism Provides the Constitutional Basis For Cable Must Carry

It is the substantial governmental interest in protecting free over-the-air television which led Congress in 1992 to pass statutory must carry rules. It was this same substantial government interest which was upheld by the Supreme Court in the *Turner* decision.⁶ The *Turner* Court found that Congress had established a government interest in preserving local over-the-air television, and that lack of cable carriage threatened this interest.⁷ "We hold that Congress could conclude from the substantial body of evidence before it that 'absent legislative action, the free local off-air broadcast system is endangered.'"⁸

⁵ See *NPRM*, par. 12, citing NRTC and EchoStar Petitions.

⁶ *Turner Broadcasting System v. FCC*, 137 L.Ed. 2d 369, 391 (1997) ("Broadcast television is an important source of information to many Americans. Though it is but one of many means for communications, by tradition and use for decades now it has been an essential part of the national discourse on subjects across the whole broad spectrum of speech, thought, and expression").

⁷ *Id.* at 400.

⁸ *Id.*, citing 1992 Senate Report, at 42.

B. Localism Also Provides the Basis For The Commission's Exclusivity Rules

The ability of television stations to acquire the exclusive rights to programming and enforce those rights against the importation of distant signals by cable systems, also is based on the concept of localism. The FCC has had exclusivity rules on the books since the mid-1970s.

Amendment of Part 73 of the Commission's Rules with Respect to Availability of Television Programs Produced by Non-Network Suppliers to Commercial Television Stations and CATV Systems, 42 FCC 2d 175, 183 (1973)(*"First Report and Order"*); *Amendment of Part 73 of the Commission's Rules with Respect to Availability of Television Programs Produced by Non-Network Suppliers to Commercial Television Stations and CATV Systems*, 46 FCC 2d 892, 899 (1974)(*"Reconsideration Order"*).

In reinstating the Syndex rules in 1988, the Commission reiterated the role exclusivity plays in local broadcast television. "Virtually every commentator supporting exclusivity attests to the critical importance of exclusivity as a competitive strategy or tool that should be available. Broadcasters, cablecasters and other delivery media must be able to differentiate their product from that of others to attract and maintain an audience." *Program Exclusivity in the Cable and Broadcast Industries*, 64 RR 2d 1818, 1835 (1988); *Program Exclusivity In The Cable and Broadcast Industries*, 4 FCC Rcd 2711 (*"Reconsideration Order"*) (1989). The cable industry challenged these rules before the D.C. Circuit, which rejected

their claims, concluding that the rules protected vital interests of local over-the-air television. *United Video, Inc. v. FCC*, 890 F.2d 1173 (D.C. Cir. 1989).

C. Congress Meant To Protect Localism In The 1976 Copyright Act and the SHVA

In adopting the 1976 Copyright Act, which granted cable systems the ability to carry broadcast signals under a limited compulsory license, Congress fully understood that the FCC had in place rules which precluded cable systems from importing distant signals to compete with local signals, in addition to a must carry regime, all designed to protect free over-the-air broadcasting. *See United Video*, 890 F.2d at 1187-1190.

When Congress undertook to grant a similar type of limited compulsory license scheme to the fledgling DTH industry, it too recognized the importance of protecting local television stations from imported distant signals. That is why it adopted the “white area” provisions of the SHVA, and adopted a very narrow definition of “unserved area.”

This television network-affiliate distribution system involves a unique combination of national and local elements, which has evolved over a period of decades. The network provides the advantages of program acquisition or production and the sale of advertising on a national scale, as well as the special advantages flowing from the fact that its service covers a wide range of programs throughout the broadcast day, which can be scheduled so as to maximize the attractiveness of the overall product. But while the network is typically the largest single supplier of nationally produced programming for its affiliates, the affiliate also decides which network programs of special interest to its

local audience, and creates an overall program schedule containing network, local and syndicated programming.

The Committee believes that historically and currently the network-affiliate partnership serves the broad public interest. It combines the efficiencies of national production, distribution and selling with a significant decentralization of control over the ultimate service to the public. It provides a highly effective means whereby the special strengths of national and local program service support each other. This method of reconciling the values served by both centralization and decentralization in television broadcast service has served the country well.

The Committee intends by this provision to satisfy both aspects of the public interest – bringing network programming to unserved areas while preserving the exclusivity that is an integral part of today's network-affiliate relationship.

Id. at 5648-49. To do this, Congress determined that the best compromise was to look to the FCC's Grade B contour to define whether an area was served or not.

D. Localism Equals Public Safety

Apart from these statutory and policy arguments, there is a very practical reason why the FCC must act to protect localism in this case. It has as much to do with protecting viewers from danger as it does with protecting the economic base of television stations to enable them to provide local programming and news. As the "war stories" above make clear, many SHVA waivers come from subscribers who either refuse to take the basic steps to receive a local signal (e.g., the waiver request based on the contention that the antenna on a rental house was "a piece of junk"), or a misunderstanding of the necessary steps to receive the

local signal (e.g., the signal test that indicated that the roof antenna was pointed to the transmitters television stations in a completely different market).

In each of these cases grant of a waiver would have the very real effect of ***precluding*** these subscribers from receiving the local signal. Beyond the fact that that household is lost to the local station's advertisers, ***it is also lost to local news and emergency programming.*** Meredith stations take their public service obligations very seriously, and is greatly concerned that there are households in the core of its market that would have no idea if a local emergency were at hand.

A few practical examples should help focus the Commission's attention. Meredith's WSMV, Nashville, preempted its regularly scheduled programming on April 16, 1998, from 7:00 a.m. until 10:30 p.m. to devote continuous coverage to a series of tornadoes ripping through the Nashville area. The station's Skymax Super Doppler radar system (a very expensive piece of equipment) was able to provide near real-time warnings of tornado touchdowns throughout the service area. Over-the-air viewers got this message and could seek shelter. Cable subscribers within the service area received this critical and potentially life saving information. Viewers within the service area illegally receiving the DTH feed, however, would have been watching some other network feed, perhaps oblivious to the extreme danger bearing down on them.

Waking up to the fact that your local television station could save your life as a tornado bears down on your house is no time to contemplate whether you should have spent a few dollars for an antenna rather than seek a waiver of the SHVA.⁹

Every waiver means that a viewer won't have the chance to receive vital information that could save his or her life in a weather or other emergency. Especially when some of those waivers come from within a station's **city of license**, Meredith cannot conceive of any rationale under which a waiver could be said to be in the public interest. Has the DTH industry nonetheless concluded that its bottom-line profits are more important than the health and safety of its subscribers when it encourages subscribers to seek waivers when the DTH company **knows** that the local signals can be received with very little effort on the part of the subscriber?

⁹ Other examples abound. On Sunday, October 4, 1998, flash floods swept through the Kansas City area (and were captured on national television by CBS as part of the Kansas City Chiefs football game). Eleven persons were killed by the floods. KCTV provided local warnings of those areas where floods were hitting with extensive live local coverage – coverage that the person seeking the waiver in Appendix A would not have received had their waiver been granted. In May, a tornado hit Mt. Pleasant, Michigan, within WNEM-TV's service area. Because of its recently opened news bureau there, WNEM-TV was able to provide early warning to local residents with on-location coverage. Just in the last week, WFSB, Hartford, CT, has run extensive coverage of a murder on the Yale University campus, where the brutal killer remains on the loose. If WFSB were to grant waivers to the many individuals in the New Haven area who requested them (even though WFSB puts an excellent signal down in that area), they would not have access to this information.

V. THE COMMISSION SHOULD NOT TAMPER WITH THE DEFINITION OF “UNSERVED AREAS” IN THE SATELLITE HOME VIEWER ACT

The main issue upon which the Commission seeks comment in this proceeding is whether it should provide some different interpretation to the “unserved area” provisions contained in the SHVA. *NPRM*, par. 1. Meredith submits that the Commission should not so intervene.

A. Congress Said Grade B and It Meant Grade B

The statute is abundantly clear. DTH companies can only provide distant network services to subscribers living in “unserved households,” defined as those which:

“(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network . . .¹⁰

The DTH industry would have the Commission believe that somehow Congress was confused or otherwise uninformed as to what “Grade B” meant, or that Congress intended that “Grade B” mean something other than the plain meaning of that term under FCC regulations and industry standards. A review of the of the legislative history of the 1988 SHVA demonstrates this simply is not the case. The legislative history points ***directly*** to Section 73.683(a), which provides a clear definition of Grade B in engineering terms. H.R. Rep. No. 100-187(I), at 26, *reprinted in* 1988 U.S.C.C.A.N. 5629 (1988). Most

devastating to the DTH industry's claims that Congress really intended a more strict standard is the fact that Section 73.683(a) also defines such a stricter standard, the Grade A contour, between 10 and 21 dBu higher than the Grade B standard, depending on channel number. The Commission simply cannot look at the legislative history and conclude that Congress never read the rule, or somehow meant to adopt a more stringent standard than Grade B when it passed the SHVA.

B. Congress Intended To Allow Distant Network Service To Very Few Areas

The statute and legislative history of SHVA are internally consistent *only* if one concludes that Congress knew what it was doing when it pointed to the Grade B standard contained in Section 73.683(a). After all, Congress' intent was to allow the importation of distant signals only into "unserved areas" – areas local stations did not reach. Elsewhere in the legislative history Congress concluded that "a high percentage of all U.S. households" are served over-the-air,¹¹ that "unserved areas" are "typically rural,"¹² and constitute only a "small percentage of television households."¹³ A Grade B contour consistent with current FCC interpretation is the only one standard which results in

¹⁰ 17 U.S.C. Sec. 119(d)(10).

¹¹ H.R. Rep. No. 100-187(I), at 19-20, *reprinted in* 1988 U.S.C.C.A.N. 5622-23 (1988).

¹² *Id.* at 5648

¹³ *Id.* at 5621.

“unserved areas” which meet the parameters Congress elicited in the SHVA legislative history.

C. The FCC Consistently Has Used The Grade B Contour To Define The Service Areas Of Its Licensees

Congress had much more than just a naked Section 73.683(a) to point to in concluding that “unserved areas” should be strictly limited to those areas outside a local station’s Grade B contour. The Commission has consistently stated that the Grade B contour of a station is the area which it is reasonably expected to serve. *See Amendment of Section 76.51 (Orlando-Daytona Beach- Melbourne-Cocoa, Florida)*, 102 FCC 2d 1062, 1070 (1986) (“[w]e believe that television stations actually do or logically can rely on the area within their Grade B contour for economic support”).

The original 1966 must carry rules required cable systems to carry signals within their Grade B contours, and the 1972 rules retained these requirements for UHF stations, because viewers within a station’s Grade B contours were expected to be able to receive a signal from such “local” stations. *Cable Television Report and Order*, 36 FCC 2d 143, 148, 174 (1972). Congress had all of this, and more, before it when it adopted its definition of “unserved areas” in Section 119 of the Copyright Act.

D. The Grade B Contour Standard Is Most Consistent With The Cable Compulsory License Also Found In Section 111 of the Copyright Act

Finally, The Commission must also not overlook the fact that Congress, in enacting a limited exception to full copyright liability for DTH, looked to its other compulsory license, the cable compulsory license, to define terms such as “local” and “unserved.” The cable compulsory license also references the Grade B contour of stations to determine whether a signal is “local” for copyright purposes. *See* 37 C.F.R. Sec. 201.17 (copyright regulations which discuss the impact of a station’s Grade B contour on its “local” status for copyright purposes”).

E. The DTV Proposals Are Inconsistent With The Statute

Set against the clear and consistent coupling between legislative intent and agency interpretation of Grade B contour, the proposals of NRTC and EchoStar represent a novel attempt to redefine the term Grade B more to their liking. NRTC advocates a redefinition of Grade B to be the area in which 100 percent of the people receive the requisite signal level¹⁴ 100 percent of the time. *NPRM*, par. 9. The EchoStar proposal is that Grade B be defined as the area in which 99 percent of the people receive a Grade B signal level 99 percent of the time, with a 99 percent confidence level. *Id.*

¹⁴ E.g., 47 dBu for Channels 2-6, 56 dBu for Channels 7-13, and 64 dBu for Channels 14-69. *See* 47 C.F.R. Sec. 73.683(a).

The Commission need ask only one set of questions with regard to these proposals: Would these standards result in :

- 1) Total “unserved areas” which constitute only a “small percentage of television households”; ¹⁵
- 2) A “high percentage of all U.S. households” remaining defined as “served” and thus not available for DTH to sell distant signals into; ¹⁶ and
- 3) The typical “unserved” household still being characterized as “rural”? ¹⁷

If the answer to any of these questions is “no,” then the standard patently is inconsistent with the legislative history of the SHVA, in which Congress made clear its intent to carve out as “unserved” a very limited number of households.

It hardly takes an engineer to conclude that both the NRTC and EchoStar proposals can’t meet this test. First, NRTC’s 100/100 standard would be virtually impossible for any station to meet, even a mile from its transmitter. Theoretically, a single sparrow landing on the receive antenna can disrupt the signal of a station for a millisecond or two. Under NRTC’s perfection standard, virtually no subscribers would be deemed as “served.” EchoStar’s 99/99/99 standard is virtually the same. A rainstorm or two in a month with gusting winds again would render the vast majority of households in the category of “unserved.” Since it is clear that these standards cannot result in the statutory intent

¹⁵ *Id.* at 5621.

¹⁶ H.R. Rep. No. 100-187(I), at 19-20, *reprinted in* 1988 U.S.C.C.A.N. 5622-23 (1988).

of a very limited number of households being defined as “unserved,” they must be rejected as the “swing for the fences” ploys that they are.¹⁸

Meredith must also point out that each of these standards is much stricter than the Grade A standard Congress had at its disposal and rejected when it defined “unserved” in the SHVA (although Meredith believes that such a standard would have been inconsistent with the other conclusions reached by Congress as to the importance of protecting local stations). Congress was aware of the Grade A standard when it pointed directly to the rule section containing the definitions of Grade A and Grade B signals. At the very instant that NRTC and EchoStar propose a standard more stringent than one which Congress rejected, their proposals cannot be squared with the statute. Indeed, any redefinition of “unserved” which results in a standard more stringent than the Grade A standard rejected by Congress in 1988 must be held to be inconsistent with the statute. It is beyond the Commission’s interpretative powers to adopt any standard which results in a station’s “served” area being smaller than its Grade A contour.

¹⁷ *Id.* at 5648

¹⁸ Meredith can only query as to whether NRTC and EchoStar would be willing to live by their own standards. In other words, are they willing to state that if they are unable to deliver a high quality signal 99 percent of the time during a month to their subscribers, that they would deem them to be “unserved” and not charge them for that month’s service? Somehow Meredith doubts that either group would find such a standard palatable for themselves.

F. Conclusion: Grade B Means Grade B

The Commission can safely conclude that Congress was not confused, it did not stumble, and it was not ambiguous when it adopted the Grade B standard for defining “unserved areas.” Rather, the *only* way to consistently interpret the statute with the legislative history is to conclude that the Grade B contour everyone has known for years was meant to define the very limited number of households into which DTH could import distant signals to the detriment of local stations. The Commission’s inquiry should end here.

VI. RELIEF AVAILABLE TO THE DTH INDUSTRY

Meredith supports the Comments filed this day by MSTV in terms of what reinterpretations are consistent with the statute, which would also eliminate some of the current confusion existing among subscribers (albeit that most of this confusion has been directly caused by the actions of the DTH industry and first selling service to people it had reason to believe were within the service area of stations, and then urge those same subscribers to seek waivers from local stations).

At paragraph 30 of the *NPRM*, the Commission suggests that the use of the Longley-Rice methodology might be a better way of predicting whether individual households are “unserved” without having to resort to individual tests. Meredith supports MSTV and the use of Longley-Rice, as long as two things are understood: 1) That tests will always trump

the predictive model; and 2) that use of the DTV Longley-Rice methodology will result in a dynamic change in the number of households which would be rendered “unserved,” then less detailed topography assumptions may be necessary. See *NPRM*, par. 36 (“if we change the number of viewers predicted to receive a local station, we may substantially affect these [localism] policies”).

VII. CONCLUSION

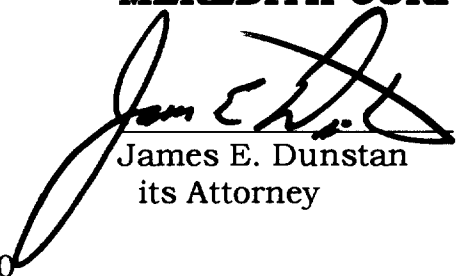
The conduct of the DTH industry with respect to the SHVA has been outrageous. It has flaunted the law, and now attempts to flaunt the intent of Congress by proposing a redefinition of “unserved areas” which would free it to continue its illegal activities. The Commission cannot condone such activities.

What the Commission can do, however, is eliminate some of the uncertainty in the statute by applying the more sophisticated methodology of Longley-Rice to better predict a station’s Grade B contour, so long as such application does not result in a substantial increase in the overall area defined as “unserved.”

WHEREFORE, the above-premises considered, Meredith Corporation respectfully requests that the Commission deny the Petitions filed by NRTC and EchoStar.

Respectfully submitted,

MEREDITH CORPORATION



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its Attorney

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December 11, 1998

APPENDIX A

**(“Sample” Waiver Submitted As
Actual Waiver Request By Someone
Residing in The Station’s City Of License)**

OCT-31-98 12:02 AM

SAMPLE Waiver RequestThis is a **SAMPLE** letter. It contains the information you need to send to your challenging network(s).

(DATE) 10-30-98

ABC, NBC
(CBS, FOX Network)

(Local Affiliate Call Letters)

(Address)

(City, State Zip)

Dear Sir/Madam:

As a PRIMESTAR customer, I was recently informed that my residence (where my satellite system is located) is located in a red zip code and thus I am ineligible to receive the satellite delivered distant network signal for (insert the network(s) - i.e., ABC, CBS, NBC, FOX). Unfortunately, however, I am not able to receive your station's off-air signal with the use of a conventional roof top antenna because ____ (STATE THE SPECIFIC REASON, FOR EXAMPLE HOMEOWNER COVENANTS AGAINST ROOF TOP ANTENNA; GEOGRAPHIC OR STRUCTURAL IMPEDIMENTS).....

I very much enjoy the programming aired by (insert network(s) - i.e., ABC, CBS, NBC, FOX), especially (LIST YOUR FAVORITE PROGRAMS AND LIST THE REASONS YOU WATCH THE PARTICULAR NETWORK). I would like to request that you consider waiving application of the Agreement to allow me to receive the (insert network(s) - i.e., ABC, CBS, NBC, FOX) signal offered from PRIMESTAR.

In the event that you agree to waiving the Agreement for my particular circumstances only, please send written notification to me, in addition to the address or fax number below, at your earliest convenience, to ensure that my network channels are activated.

Customer Advocate Team
SHVA Waivers
P.O. Box 4097
Englewood, CO 80155-4097
Fax to: (303) 712-4491

Thank you in advance for your cooperation and assistance.

Very truly yours,

(Your Signature)

The following four (4) items are mandatory; without them, your request cannot be processed

(Your Name)

(Account Number)

(Address)

(City, State, Zip Code)

KANSAS, City Mo 64126